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St. Martin's Press, LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JARED EDWARDS,
Plaintiff

vs.

KEENEN IVORY WAYANS,
SHAWN WAYANS, MARLON
WAYANS, WAYANS BROTHERS
PRODUCTIONS, AND ST.
MARTIN'S PRESS, INC.,
Defendants.

CASE NO. 2:10-cv-02231 R (RCX)

[Honorable Manuel Real,
Courtroom 8, USDC - Central District]

**PARTIES AGREED PROPOSED JURY
INSTRUCTIONS**

Trial Date: July 12, 2011

The Parties hereby jointly submit the following proposed jury instructions.
Additional jury instructions to which the parties did not agree shall be filed and
served separately.

TABLE OF CONTENTS

Joint Proposed Instruction No. 1:

Preliminary Instructions for Copyright	1
Authority	2

Joint Proposed Instruction No. 2:

Copyright Defined	3
Authority	4

Joint Proposed Instruction No. 3:

Copyright Infringement—Elements	5
Authority	6

Joint Proposed Instruction No. 4:

Plaintiff’s Burden Of Proof	7
Authority	8

Joint Proposed Instruction No. 5:

Copyright - How Obtained	9
Authority	10

Joint Proposed Instruction No. 6:

Copyright Damages – Generally	11
Authority	12

JOINT PROPOSED INSTRUCTION NO. 1:
PRELIMINARY INSTRUCTIONS FOR COPYRIGHT

Plaintiff, Jared Edwards (“Plaintiff”) claims ownership of a valid copyright for a work entitled “*You know you’re a Golddigger when...*,” a work which he claims was copied by Defendants to create an illustrated joke book entitled *101 Ways to Know You’re a Golddigger*, and Mr. Edwards seeks damages against defendants, Keenen Ivory Wayans, Shawn Wayans, Marlon Wayans, Wayans Bros. Productions, and St. Martin’s Press, LLC (collectively, “Defendants”), for copyright infringement. In particular, Plaintiff claims he wrote certain jokes that Defendants used in *101 Ways to Know You’re a Golddigger* book.

Defendants deny that Plaintiff is the rightful copyright owner of any of those jokes or that they infringed upon any copyright. Defendants contend that Plaintiff does not own a valid copyright for any of the text of *101 Ways to Know You’re a Golddigger* because any text that Plaintiff worked on was either a “work made for hire” or part of a “joint work.” Further, to the extent Plaintiff owns a valid copyright in any portion of the text of *101 Ways to Know You’re a Golddigger*, Plaintiff waived his ownership rights by consenting to the Defendants’ use of that text.

To help you understand the evidence in this case, I will explain some of the legal terms you will hear during this trial.

_____ GIVEN
_____ GIVEN AS MODIFIED
_____ REFUSED
_____ WITHDRAWN

Honorable Manuel L. Real
District Court Judge

Authority: *Ninth Circuit Model Jury Instructions for Copyright* 17.0 Preliminary Instruction—Copyright

JOINT PROPOSED INSTRUCTION NO. 2:

COPYRIGHT DEFINED

Copyright is the exclusive right to copy. This right to copy includes the exclusive rights to:

(1) authorize, or make additional copies, or otherwise reproduce the copyrighted work in copies; and

(2) distribute copies of the copyrighted work to the public by sale or other transfer of ownership.

It is the owner of a copyright who may exercise these exclusive rights to copy. The term “owner” includes the author of the work or in a work for hire situation, the employer. In general, copyright law protects against distribution of substantially similar copies of the owner’s copyrighted work without the owner’s permission. An owner may enforce the right to exclude others in an action for copyright infringement.

_____ GIVEN
_____ GIVEN AS MODIFIED
_____ REFUSED
_____ WITHDRAWN

Honorable Manuel L. Real
District Court Judge

Authority: *Ninth Circuit Model Jury Instructions for Copyright* 17.1, Copyright—
Defined

JOINT PROPOSED INSTRUCTION NO. 3:
COPYRIGHT INFRINGEMENT—ELEMENTS

Anyone who copies original elements of a copyrighted work during the term of the copyright without the owner's permission infringes the copyright.

On Plaintiff's copyright infringement claim, Plaintiff has the burden of proving both of the following elements by a preponderance of the evidence:

1. Plaintiff is the owner of a valid copyright; and
2. Defendants copied original elements from the copyrighted work.

_____ GIVEN
_____ GIVEN AS MODIFIED
_____ REFUSED
_____ WITHDRAWN

Honorable Manuel L. Real
District Court Judge

Authority: *Ninth Circuit Model Jury Instructions for Copyright* 17.4 (17 U.S.C. § 501(a)–(b))

JOINT PROPOSED INSTRUCTION NO. 4:
PLAINTIFF'S BURDEN OF PROOF

In this case, Plaintiff contends that he has a valid copyright and that Defendants have infringed Plaintiff's copyright. Plaintiff has the burden of proving by a preponderance of the evidence that he is the owner of the copyright and that Defendants copied original elements of the copyrighted work. Preponderance of the evidence means that you must be persuaded by the evidence that it is more probably true than not true that the copyrighted work was infringed.

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_____ GIVEN AS MODIFIED
_____ REFUSED
_____ WITHDRAWN

Honorable Manuel L. Real
District Court Judge

Authority: *Ninth Circuit Model Jury Instructions for Copyright* 17.0 Preliminary
Instruction—Copyright

JOINT PROPOSED INSTRUCTION NO. 5:
COPYRIGHT - HOW OBTAINED

Copyright automatically exists in a work the moment it is created. The owner of the copyright may register the copyright by depositing a copy of the copyrighted work in the Copyright Office of the Library of Congress. After a determination that the material constitutes copyrightable subject matter and that legal and formal requirements are satisfied, the Register of Copyrights registers the work and issues a certificate of registration to the copyright owner. There is no administrative investigation as to the originality or uniqueness of the work or a determination of the validity of the claim. A certificate of copyright registration is refused only if it falls outside the broad category of matter eligible for copyright registration. Therefore, while the existence of a copyright registration creates some presumption that a work is indeed entitled to copyright protection, the fact that a copyright registration has been issued is not dispositive as to whether the work is entitled to copyright protection.

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_____ GIVEN AS MODIFIED
_____ REFUSED
_____ WITHDRAWN

Honorable Manuel L. Real
District Court Judge

1 **Authority:** *Ninth Circuit Model Jury Instructions for Copyright* 17.0 Preliminary
2 Instruction—Copyright; Herbert RosenthalJewelry Corp. v. Kalpakian, 446 F.2d 738,
3 740-41 (9th Cir. 1971) (a certificate is refused only if the subject falls outside the
4 broad category of matter subject to copyright registration); 17 U.S.C. §§4-5.

JOINT PROPOSED INSTRUCTION NO. 6:
COPYRIGHT DAMAGES - GENERALLY

If you find that the Wayans Defendants infringed the Plaintiff's copyright and if you find that none of the Defendants' affirmative defenses apply, then you must determine Plaintiff's damages, if any. Plaintiff has the burden of proving damages by a preponderance of the evidence. You should not interpret the fact that I have given you instructions about the Plaintiff's damages, if any, as an indication in any way that I believe that the Plaintiff should, or should not, win on his claims for copyright infringement. It is your task first to decide whether the Defendants are liable for copyright infringement or whether Defendants' affirmative defenses are applicable. I am instructing you on damages only so that you will have guidance in the event you decide that the Defendants are liable for copyright infringement.

_____ GIVEN
_____ GIVEN AS MODIFIED
_____ REFUSED
_____ WITHDRAWN

Honorable Manuel L. Real
District Court Judge

Authority: *Ninth Circuit Model Jury Instructions for Copyright* 17.5.1 (modified)

SUBMITTED BY:

Dated: July 5, 2011

FREEDMAN & TAITELMAN, LLP

By: /s/
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 September Rea, Esq.
 Attorneys for Defendants Keenen Ivory
 Wayans, Shawn Wayans, Marlon Wayans,
 Wayans Bros. Productions, and St. Martin's
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